UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 16, 2024

Via email only: jeff.snell@vansd.org

Dr. Jeff Snell
Superintendent
Vancouver School District
2901 Falk Road
Vancouver, WA 98661

Re: Vancouver School District, OCR Reference Number 10221346

Dear Superintendent Snell:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the referenced complaint against Vancouver School District (District). The Complainant alleged that the District failed to respond effectively to a report of racial harassment at an interscholastic baseball game where junior varsity players from XXXXXX in the XXXXX School District shouted racial slurs at Student A, a District XXXXXX student.

OCR investigated this complaint under its authority to enforce Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., and its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, and national origin in programs and activities receiving federal financial assistance from the Department. As a recipient of federal financial assistance from the Department, the District is required to comply with Title VI.

OCR investigated the following issue:

- Whether the District failed to respond reasonably, promptly, and effectively to a report of racial harassment of Student A by other students consistent with the requirements of Title VI.

A careful review of the evidence gathered during the investigation to date raises Title VI concerns regarding the District's satisfaction of its obligation to respond reasonably and effectively to notice of a racially hostile environment at XXXXXXXXXXX. OCR is concerned that the District does not appear to have effectively responded with supports to remedy the impact of the hostile environment on Student A.

The concerns identified by OCR will be addressed through an agreement to resolve the complaint under Section 302 of the OCR Case Processing Manual (CPM) (available at https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).

In conducting its investigation and making its determination, OCR considered information provided by the District and Complainant, including documents regarding the incident of racial harassment, the District's response, and the District's policies and procedures regarding racial harassment. OCR also considered information provided by the XXXXXXXX School District. The applicable legal standards, summary of the investigation to date, and reasons for the determinations in this matter are summarized below.

Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. The existence of a hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of race in violation of Title VI.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race existed; (2) the recipient had actual or constructive notice of a hostile environment based on race; and (3) the recipient failed to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome race-based conduct that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive, that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity. Harassing acts need not be targeted at the parent to create a hostile environment. The conduct may be directed at anyone, and the harassment may also be based on association with others of a different race (the harassment might be referencing the race of a sibling or parent, for example, that is different from the race of the victim whose access to the school's program is limited or denied). The harassment must in most cases consist of more than casual or isolated incidents to establish a Title VI violation. Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the race-based harassment, as well as the identity, number, age, and relationships of the persons involved. If OCR determines that the harassment was sufficiently severe that it would have adversely affected a reasonable person, of the same age and race as the victim, under similar circumstances, from participating in or enjoying some aspect of the recipient's education program or activity, OCR will find that a hostile environment existed.

A school may be found to have violated Title VI if it has failed to correct a hostile environment based on harassment of which it has actual or constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient. Once a recipient has notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on race must be tailored to redress fully the specific problems experienced because of the harassment.

Summary of Investigation

According to data reported to the Washington State Office of Superintendent of Public Instruction, XXXXXXXXXXX enrolled 1,724 students in the 2021-2022 school year. The race/ethnicity demographics data states that the student population during 2021-2022 school year was 2.2% Black, 0.3% American Indian/Alaska native, 6.4% Asian, 18.8% Hispanic, 1% Native Hawaiian/Pacific Islander, and 64.4% white, with 6.8% of students identifying as two or more races.

During the 2021-2022 school year, Student A was enrolled as a junior at XXXXXXXX in the District and was a member of the junior varsity (JV) baseball team. Student A was XXXXXXXXX.

The information provided by the District and Student A's parent (parent) shows that on April 20, 2022, a JV baseball game took place at XXXXXXXX in the XXXXXXX School District between XXXXXXXX and XXXXXXXX. According to the parent, during the pre-game warmup, XXXXXXXX players were overheard by XXXXXX players saying the "n-word" and discussing who was the most racist on the team, and directed ape and gunshot sounds toward Student A during the game. Student A reported the racial harassment to his coaches during the game. The XXXXXX coaches told him to let them know if it happened again. Student A informed his parent after the game about the racial harassment, and she emailed the XXXXXX Principal and XXXXXX Athletic Director (XXXXXX AD) that evening.

On April 21, 2022, the parent met with the XXXXXX Principal about the April 20 incident. During this meeting, the XXXXXX Principal told OCR that he and Student A's parent discussed immediate support for Student A, and the XXXXXX Principal stated that the school counselor could reach out to Student A. The parent stated that Student A did not have an established relationship with the school counselor and felt that it would be better for the XXXXXX AD to connect and check in with Student A. Following this meeting, the XXXXXX Principal attempted to contact the XXXXXXXX Principal at that time (former XXXXX Principal), but he was out on medical leave.

This same day, the XXXXXX AD also contacted the XXXXXXX Athletic Director at that time (former XXXXX AD) and reported the racial slurs at the JV baseball game to him. The XXXXXX AD and former XXXXXX AD then jointly contacted the Washington Interscholastic Activities Association (WIAA) to inform them of the April 20 incident and to set up a video meeting for April 22. Also that day, the XXXXXX Principal sent a school-wide email to all XXXXXX parents and guardians informing them of a report of a racial incident at a JV baseball game, that the upcoming baseball games with the XXXXX School District were cancelled, and that XXXXXX staff were working with XXXXXXX staff to investigate the incident.

In an interview with OCR, the XXXXXX AD stated that following the parent's report, he interviewed all JV XXXXXX players and coaches who were present at the game. From these player interviews, the District found that during warm-ups the XXXXXX athletes were running and performing a stretch called "grave diggers." Instead of shouting "grave diggers," the XXXXXX athletes heard the XXXXXXX athletes shouting grave "n-word" approximately four times. The District also found that, during the warm-ups, XXXXXX athletes heard the XXXXXXX athletes talking among themselves about which of the XXXXXXX athletes was the most racist. The JV coaches were not present during this pre-game warmup.

The XXXXXX AD told OCR that, while the XXXXXX players all reported hearing the "n-word" during the pre-game warmup, the XXXXXX AD determined the evidence was inconclusive as to whether they heard anyone make ape and gunshot noises directed at Student A or anyone else during the game, as only Student A and no other XXXXXX player conclusively stated that they heard this. The JV coaches told the XXXXXX AD they did not hear anything from the dugout. The XXXXXX AD told OCR that he received a copy of a video of the game from the former XXXXXX AD, which did not include the pre-game warm-up. The XXXXXX AD stated to OCR that he watched the game and did not hear any unusual noises.

The XXXXXX AD also told OCR that during his interviews with the JV coaches, the XXXXXX AD discussed a coach's role in addressing harassment and discriminatory behavior from opposing athletes. The XXXXXX AD stated that the coaches were reminded of their obligation to immediately intervene when such behavior occurs, and that, per WIAA policy, a response is required and that notices to the offending students' coaches and the referees overseeing the event are required.

The XXXXXX AD stated to OCR that the Baseball Head Coach convened the varsity and JV baseball teams the day after the JV game, on April 21, 2022, to discuss the impact the racial harassment had on Student A, and how the situation would be addressed in the future by using the WIAA guidelines to notify officials and immediately stop the game whenever there was any indication that discriminatory behavior occurred. The XXXXXX AD told OCR that the varsity and JV baseball teams held a follow-up meeting on April 23, 2022, to check in with players.

In an interview, the former XXXXXX AD told OCR that on April 22, 2022, the WIAA, the former XXXXXX AD, and the XXXXXX AD met via a video call to discuss strategies for repairing the harm that occurred, and to discuss imposing appropriate consequences. The WIAA recommended bringing the students from both teams together or convening a student focused conversation on sportsmanship and culturally responsive behavior.

On April 26, 2022, the former XXXXXX AD introduced the XXXXXX Principal and XXXXXX AD to an entity that the former Camus AD said could assist with facilitating a restorative justice session regarding race, culture and sportsmanship among XXXXXX and XXXXXX baseball teams.

The next day, on April 27, 2022, the former XXXXX AD sent an email to the District informing them that the XXXXX School District had completed its investigation into the April 20 incident and determined that, while it could not confirm all allegations, XXXXXX players had engaged in "racial microaggressions." In the email, the former XXXXXX AD expressed remorse for what happened. The email reflects that all XXXXXXX JV baseball games would remain cancelled until the situation involving the XXXXXX and XXXXX JV teams was resolved.

The following day, on April 28, 2022, the XXXXXX Principal sent a school-wide email to all XXXXXX parents and guardians stating that XXXXXXXX had received an apology from the XXXX School District and that both high schools planned to come together to rebuild trust. The same day, the XXXXXX AD held an all-coaches meeting to go over the WIAA policy and discuss a coach's obligation to act if there are any reports of harassing or discriminatory behavior during athletic practices or competition events.

During May 2022, the District attempted to schedule restorative justice sessions during the summer months with the consulting organization identified by the former XXXXXXX AD. However due to communication and scheduling conflicts, the consulting organization was unable to conduct the sessions in June.

On July 1, 2022, the parent, along with representatives from the NAACP, met with the XXXXXX Principal and XXXXXX AD. In this meeting, the parent stated that, following the April 20 incident, Student A began viewing many people as racist, had begun using the "n-word," which previously he did not use, and had begun feeling that things are occurring to him because of his race. The parent also shared with the XXXXXX Principal and AD that Student A's grades had declined following the April 20 incident. The parent requested private counseling for Student A from the District, in order to address the specific issues that arose following the JV baseball game, which the parent felt the in-school counselor lacked the training for, as well as a scholarship fund. The parent stated that she was not interested in Student A participating in a restorative justice session led by the consulting organization identified by the former XXXXXX AD if the XXXXX School District did not take more responsibility for the April incident. The XXXXXX Principal stated that he would forward the request for private counseling to the XXXXXXXX School District.

Regarding whether the District contemplated providing the private counseling requested by the parent, the District told OCR that it believed XXXXXX School District was responsible for providing this as the XXXXXXX student athletes, not XXXXXX students, had caused the harm to Student A. In an interview, the XXXXXX Principal told OCR that he contacted the XXXXX School District Assistant Superintendent, (XXXXXX Assistant Superintendent) and informed them of the request for private counseling. The XXXXXX Principal told OCR that the XXXXXXX Assistant Superintendent stated that she would speak with the XXXXXXX School District Superintendent but that he did not hear back from her. Following the parent's decision to decline to move forward with the restorative justice work, the XXXXXX School District terminated the contract with the consulting organization.

Information the XXXXXXXX School District provided OCR reflects that in May 2022, the former XXXXXXX AD began transitioning out of his role and was replaced by a new XXXXXXX Athletic Director (current XXXXXX AD). The XXXXXX AD and current XXXXXX AD decided to put on a joint summit to teach culturally responsive behavior and to restore relationships. On October 3, 2022, the two districts held a XXXXXX-XXXXXX Sportsmanship Summit. Students from the different schools' associated student bodies, bands, and fall sports teams, including football, soccer, and volleyball, attended the summit. They discussed how to develop and support positive relationships between the schools and how to set clear expectations for behavior on the playing field and in the stands. During this summit, the participants came up with action steps, including writing a script to be read before games, creating a TikTok video to help set expectations for spectators, creating signage to put up at games, and writing bullet points for conversations captains could have with teams.

On October 14, 2022, six school districts came together to hold a coach-student summit on sportsmanship. This was attended by XXXXXX varsity captains and coaches. During this summit, coaches received training on the categories of racial microaggressions, recognizing microaggressions and interrupting microaggressions.

In addition to these summits, the XXXXXX AD told OCR that he has monthly meetings with his coaching staff. The XXXXXX AD stated that he informs his coaches each month about the WIAA rule regarding addressing discrimination and harassing behavior. He also told OCR that the District continues to hold a "sports night" meeting for athletes, parents, and coaches at the beginning of each season, where he discusses expectations, WIAA policy, and protocols for what they should do if something happens during a game. The XXXXXX AD stated that he did this for fall 2022 sports and planned to do so for every upcoming season.

The XXXXXX AD also told OCR that following the parent's initial email to him informing him of the April incident, he began checking in on Student A daily for the remainder of the 2021-2022 school year. The XXXXXX Principal told OCR that he also checked in with Student A following the April 20 incident. The XXXXXX AD told OCR that Student A was offered meetings with the school counselor, or to come to him, his coaches, or the XXXXXX Principal if

he had a bad day. The XXXXXX AD stated that he did not believe that Student A utilized the school counselor.

In an interview on March 2, 2023, Student A told OCR that the XXXXXX Principal did not check in with him immediately following the April 20 incident. Student A stated that the XXXXXX Principal did not connect him with the school counselor regarding this incident. Student A stated that the XXXXXX AD did not check in with him until about a month after the April 20 incident. Student A recalled that the XXXXXX AD pulled him aside between classes and said that he was sorry for what happened and that there had been reports of race harassment against XXXXXX School District before. Student A stated to OCR that this conversation was less than five minutes long.

The parent stated to OCR that she requested private counseling for Student A in meetings with the District on April 21, 2022, July 1, 2022, and in October 2022, and the District failed to provide it, stating instead that the responsibility for providing it was with XXXXX School District. As noted above, the parent requested private counseling because she believed the in-school counselor lacked the training to address Student A's needs that arose following the JV baseball game.

The parent further told OCR that Student A's grades had dropped by a whole letter grade in two of his core classes since the April 20 incident occurred. Regarding the 2022-2023 school year, the parent stated that Student A was disengaged from school and his grades declined. The parent stated that this affected Student A's college applications. The parent stated that this is the reason that she wanted a scholarship fund for Student A, but the District had not responded to this request. The parent stated that she finally got the District to provide tutoring in Student A's math course in October 2022.

The XXXXXX Principal told OCR that during the 2022-2023 school year, Student A struggled with his math grades and met with his academic counselor, math teacher, and the associate principal of curriculum to get additional supports in that class, including after school tutoring. The District provided Student A's transcript for the 2021-2022 school year. During fall 2021, prior to the baseball game, Student A received a 3.1 GPA. During the spring semester, prior to the April 20, 2022, baseball game, Student A's grades in math and science dropped, falling, between January 27 to April 12, 2022. Following the baseball game, Student A's math grade and science grade rose to passing grades. Overall, Student A received a 2.9 GPA for the spring semester, reflecting both the drop in his math and science grades prior to April 20 and their subsequent rise before the end of the term.

The District also provided Student A's transcript for fall 2022. During this semester, Student A dropped another letter grade in his science course and was not graded on his math course.

Student A also told OCR that during the 2022-2023 school year he had not been offered any supports regarding the incident. Student A told OCR he played baseball during the spring 2023

season and reported that there were not any conversations about racism by the head coach. Student A stated that the XXXXXX Principal and XXXXXX AD stopped him in the hallways to ask how he is doing a few times during the 2022-2023 school year.

Analysis

The investigation to date indicates that during the JV baseball game on April 20, 2022, between XXXXX and XXXXXX, XXXX JV baseball players made racially harassing statements. The evidence also establishes that the District had notice of the racially harassing comments and the District treated the comments as having created a hostile environment for Student A, who was the only Black student athlete on the XXXXXX JV baseball team.

Additional evidence OCR gathered reflects that after being notified of XXXXXXX JV baseball players' comments on April 20, 2022, the District notified the school community of the serious incident and the District's investigation of it, cancelled upcoming varsity and JV baseball games against XXXXX School District, and promptly conducted an internal investigation. Additionally, the District (1) retrained the JV coaches on their obligation to immediately intervene when such behavior occurs, (2) conducted trainings on addressing harassment with all athletic coaches and XXXXXX baseball athletes, (3) participated in a sportsmanship summit with XXXXXXX School District, and (4) participated in a six-district summit related to sportsmanship, equity, and addressing harassment.

However, OCR is concerned that the District may have failed to effectively remedy the effects of the racially hostile environment experienced by Student A. Specifically, OCR has received conflicting information in its investigation to date as to whether the District offered other individual supports to Student A, such as check-ins with the Principal and Athletic Director. Based on this evidence, OCR has a concern that the District may not have taken steps reasonably designed to remedy effectively the racially hostile environment experienced by Student A, given the notice to the school of the continued negative impact on Student A.

Conclusion

Based on the District's willingness to address the concerns identified by OCR through a voluntary resolution agreement, OCR determined that it is appropriate to enter into an agreement to resolve the complaint under Section 302 of the OCR Case Processing Manual (CPM) (available at https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf). The District signed the attached agreement (Agreement), which, when fully implemented, will address the concerns identified by OCR.

The actions the District will take under the Agreement include offering services to Student A to remedy the effects of the harassment, including, counseling services or comparable services as agreed upon between the District and the Complainant. Additionally, the District will provide training to athletic staff and building-level administrators at XXXXXXXXXX on the

obligation under Title VI to take prompt and effective steps reasonably calculated to end the harassment based on race, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

OCR will monitor the District's implementation of the Agreement. Upon the District's compliance with the terms of the Agreement, and with Title VI and its implementing regulation at 34 C.F.R. Part 100, OCR will close the case. As noted in the Agreement, the District's first monitoring report to OCR is due by October 13, 2024.

This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

This concludes OCR's investigation of this complaint. The Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter, you may contact Alexa Polaski, Senior Attorney, at 202-987-0987 or at alexa.polaski@ed.gov.

Sincerely,

David Kauffman,
Supervisory Attorney